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ABSTRACT

This position statement by the National Mental Health Association (NMHA) addresses the diversion of persons from the criminal justice system of all persons accused of crimes for whom voluntary mental health treatment is a reasonable alternative to the use of criminal sanctions. It states that the NMHA supports the long-term goal of a culturally competent community-based mental health system focused on consumer empowerment and quality of life, building on the strengths of persons affected by serious mental illness and aiming at their recovery in a manner that integrates them into the community. The statement includes sections on the rationale for this policy, types of jail diversion programs, and the implementation of effective diversion strategies. (Contains 12 references.) (GCP)

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National Mental Health Association Position Statement

In support of maximum diversion of persons with serious mental illness from the criminal justice system

March 9, 2003

ED 479 319

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NMHA Position Statement

In support of maximum diversion of persons with serious mental illness from the criminal justice system

Statement of Policy

The National Mental Health Association (NMHA) supports maximum diversion from the criminal justice system of all persons accused of crimes for whom voluntary mental health treatment is a reasonable alternative to the use of criminal sanctions, at the earliest possible phase of the criminal process, preferably before booking or arraignment. Conversely, NMHA does not support the use or threat of use of criminal sanctions to compel mental health treatment. These principles apply with equal force to adult and juvenile offenders

NMHA supports the long-term goal of a culturally competent community-based mental health system focused on consumer empowerment and quality of life, building on the strengths of persons affected by serious mental illness and aiming at their recovery in a manner that integrates them into the community. Our society's recent focus on lifestyle crimes which punish behaviors inherent in living on the streets coupled with an emphasis on community policing have all-too-often led to the "criminalization" of mental illness and poverty.

NMHA encourages local and state mental health associations and other advocates to support the development of diversion strategies that promote police officer training, community engagement, and early intervention in an effort keep persons with mental illness out of the criminal justice system.

Rationale for this Policy

Approximately 2 million people are incarcerated in U.S. prisons or jails on any given day. 1 According to a Report of the Surgeon General, approximately 5 percent of adults in America are considered to have a "serious" mental illness; that is, a mental disorder that significantly interferes with some aspect of an individual's daily functioning. 2 In contrast, the U.S. Department of Justice Reports that about 16 percent of the population in prisons or jails at any given time has a mental illness 3, representing approximately 283,000 individuals. Over the course of a year, 10 million people enter U.S. jails 4; nearly 700,000 of them have a serious mental illness.

In a subsequent report entitled, Mental Health: Cultural, Race, and Ethnicity, the Surgeon General concluded that disparities existed in mental health systems for persons of diverse populations, and that mental illnesses exacted a greater toll on their overall health. National indicators show that persons representing diverse racial and ethnic populations are disproportionately represented in both adult and juvenile justice systems. Studies also show that there are few if any differences in the nature and scope of crimes committed by persons of diverse racial, cultural and ethnic populations in comparison to their

Caucasian counterparts. Yet the rates of arrest, prosecution, and incarceration, as well as their length of sentences are substantially higher for persons of diverse backgrounds.

The implications of these findings suggest that persons representing diverse backgrounds who also have a mental illness are denied the opportunity to access mental health treatment to an even greater extent because they are far more frequently punished in justice systems (which offer little or no treatment for mental illness) as opposed to treated in comprehensive culturally competent mental health systems. For youth in justice systems, these disparities are even more striking. Studies show that youth from diverse racial and ethnic populatoins are overrepresetned in the juvenile justice system and experience substantially higher rates of mental health disorders than youth in the general population. 5

People with mental illnesses are repeatedly arrested for petty offenses. Fewer than 5% of jails polled nationwide in 1992 had procedures to divert inmates with mental illness from the criminal justice system into the mental health treatment system. The extraordinary cost of the criminal justice system argues strongly that effective diversion may produce better results at a lower cost.

The problem of mental illness among the population of persons in the nation's jails and prisons is serious and is growing. In New York State, a five-year study of persons in the mental health and correctional systems established that men who were involved with the public mental health system were four times as likely to be jailed as men in the general population. 6 The Los Angeles County Jail, Chicago's Cook County Jail and New York City's Riker's Island "each hold more people with mental illness on any given day than any hospital in the United States." 7 The Los Angeles County Jail has for a number of years been declared to be the largest mental health facility in the country. In an era of deinstitutionalization, jails and prisons have become psychiatric treatment facilities. 8

People with mental illness in jails and prisons have complex and challenging needs. Almost 75 percent have co-occurring mental health and substance use disorders. 9 Homelessness is widespread – inmates with mental illness were 2.5 times as likely to have experienced homelessness in the year prior to arrest than inmates not diagnosed with mental illness. 10 Nearly half of the inmates with mental illness in prison were incarcerated for committing a nonviolent crime. 11 Many have been incarcerated for minor offenses such as trespassing, disorderly conduct and other symptoms of untreated mental illness. 12

There is now widespread concern regarding the unmet needs of persons with mental illness in the nation's jails and prisons and the toll it exacts on these individuals, their families, service agencies and the criminal justice system. With this concern comes a growing conviction that a turning point has been reached: More effective measures must be taken to prevent these individuals from entering the nation's jails and prisons in the first place, and probation personnel need to be specially trained to deal effectively with the issues of mental illness, particularly as it effects diverse cultural, racial, ethnic

populations, and in collaboration with mental health agencies. The consequences of maintaining the status quo are expensive and dangerous.

Need for Diversion

The increasing involvement of persons with serious mental illness in the criminal justice system has enormous fiscal, public safety, health and human costs. Diverting individuals with mental illness away from jails and prisons and toward more appropriate and culturally competent community-based mental health treatment has emerged as an important component of national, state and local strategies to provide effective mental health care; to enhance public safety by making jail and prison space available for violent offenders; to provide judges and prosecutors with alternatives to incarceration; and to reduce the social cost of providing inappropriate mental health services or no services at all. The success of diversion programs in communities across the country is generating genuine excitement and hope that real progress can be made in meeting the challenge of criminlization.

Studies show that diversion of persons with mental illness accused of misdemeanor crimes into appropriate, community-based mental health treatment programs reduces recidivism and contributes to better long-term results for offenders. 13 NMHA recognizes that the development of diversion programs involves negotiation between the mental health system, public defenders, prosecutors, court personnel and others in the criminal justice system. Each community must reach consensus on the type of diversion program appropriate for that community and the severity of offenses that may disqualify offenders from participation in the program. However, the principal consideration should be assuring that careful consideration is given to diversion of persons with serious mental illness in spite of serious charges, which may be more reflective of stigma than the real severity of the offence.

There are two major kinds of jail diversion programs: pre-arrest and post-arrest.

1. Pre-Arrest ("Pre-Booking") Diversion Strategies

Pre-arrest strategies typically focus on the police officers that are often the first point of contact with persons with mental illness in crisis. Since their initial interactions with persons with mental illness are so critical to determining the situation's outcome (i.e., whether or not an individual with mental illness is jailed), pre-arrest jail diversion strategies rely heavily on helping police become knowledgeable regarding the nature of mental illness, provide tools to de-escalate crisis situations and provide options for mental health treatment alternatives to incarceration that are available in the community.

Examples of pre-arrest strategies include: police training to recognize the signs of mental illness; deployment of a mobile crisis response team that provide assistance and support to police and the individual; and transportation to mental health treatment rather than jail. Culturally competency is a critical component of such training, to avoid the unequal treatment that comes from stereotyping racial and cultural groups. Communications through language and empathy are key to

assuring equal access to diagnosis, treatment and diversion, in spite of the multiple stigmas to which person representing diverse cultural, racial, and ethnic populations accused of crimes are subject.

2. Post-Arrest ("Post-Booking") Diversion Strategies
Post-booking diversion programs are the more common type of jail diversion program in the United States. After formal charges have been filed, post-booking programs screen individuals to determine the presence of mental illness; negotiate with prosecutors, attorneys, courts and mental health providers to dispose of the case without additional jail time; and link the individual with mental health treatment as a condition of a reduction in charges, deferred prosecution or dismissal.

Mental health courts are an example of a post-booking jail diversion program. Mental health courts hear cases involving persons with mental illness who have been charged with non-violent crimes. They divert these individuals away from jail or prison by negotiating a mental health treatment program that might include group or day services, psychotropic medication, case management or inpatient hospitalization in order to restore defendants to stable functioning in their communities.

Avoid Coerced Treatment
The key issue with the use of post-booking supervision for persons with serious mental illness or co-occurring disorders is that of coercion. In the case of someone with mental illness or co-occurring disorder, it is critical that he or she is able to direct his or her own recovery and to deal with side effects of treatment. Probation supervision is often lacking and, when it occurs in relation to a person with serious mental illness or co-occurring disorder (usually after a crisis), it often occurs to the detriment of the treatment process. With the new understanding of the role of recovery in successful mental health treatment, NMHA is wary of the expanded use of the criminal justice system, with its increased focus on persons with mental illness, as a substitute for the system of voluntary community-based treatment that mental health advocates have consistently sought. Probation can be a life sentence, with ongoing supervision and revocation of probation whenever there is a relapse. The sense of dependency and helplessness that comes from this kind of criminalization is at the core of the need for effective diversion.

However well intentioned, programs which provide preferential treatment access to persons with serious mental illness or serious emotional disorder premised upon a plea or finding of guilty to a criminal charge, with the effect that lack of treatment compliance may lead to incarceration or other criminal sanctions, inevitably increase the stigma of mental illness and mental health treatment.

Need for Genuine Diversion
Mental health treatment is essential after a conviction to deal with symptoms of serious mental illness or emotional disorder. But such treatment is a poor substitute for genuine diversion. Diversion from incarceration is important, whenever possible, since

incarceration can substantially exacerbate symptoms of mental illness. But diversion from the criminal justice system is a far more powerful idea to combat further criminalization of persons with serious mental illness or emotional disorder.

Dismissal of Charges
NMHA believes that successfully completed pre-booking and post-booking diversion programs both should provide for dismissal of criminal charges. In the case of post-booking diversion, jeopardy of re-involvement in the criminal justice system should be limited in accordance with the criminal justice standards in that jurisdiction. As a guideline, conditions of deferred prosecution, deferred sentence or probation ordinarily should not exceed one year.

Implementing Effective Diversion Strategies

Resources
Timely and accurate mental health screening and evaluation is the single most critical element in a successful diversion program. And more treatment resources are desperately needed. Communities must develop services that meet needs of mental health consumers. In addition to significant increases in public investment, services must be integrated across public and private agencies. Individual treatment plans should be focused on consumer recovery and choice and should include: mental and physical healthcare, case management, appropriate housing, supportive education, integrated substance abuse treatment, and psychosocial services, in the least restrictive environment possible.

Coalitions
Diversion programs also require the development of community coalitions, including but not limited to partnerships between criminal justice, mental health and substance abuse treatment agencies. Coalitions should also be reflective of the diverse make-up of the community. Joint mobile outreach services such as crisis intervention teams are a key element in successful partnering between mental health and law enforcement agencies, with effective diversion to an appropriate treatment plan the critical measure of success. Consumers of mental health services and family members affected by mental illness need to be included in such coalitions to assure that the real barriers to effective mental health treatment in that community are addressed.

These community coalitions need to reach out to all criminal justice system personnel and ensure that include comprehensive culturally competent training is provided at all levels to deal with issues of mental illness, wherever and when-ever they occur. Mental health associations should reach out to or create such coalitions whenever possible. Effective diversion from the earliest point of contact with the criminal justice system of a person with serious mental illness or serious emotional disorder should be a centerpiece of all mental health planning, with the aim of promoting recovery from serious mental illness and as an end to all unnecessary use of criminal sanctions.

Passed by the NMHA Board of Directors on March 9, 2003.

For the most recent information on best practices in jail diversion please contact the NMHA Advocacy Resource Center at 1-800-969-6642, or by email, shcrinfo@nmha.org.

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